FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPLICATION NO. 475 OF 2005.
IN.
CRIMINAL APPEAL NO. 76 OF 2005.

Prakash Dnyandeo Yadav .. Applicant.
vs.
The State of Maharashtra. .. Respondent.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri A.P. Mundargi with R.S. Kate for the applicant.

Shri D.P.Adsule, A.P.P. for the State.

CORAM: V.M. KANADE,J.

DATED: 18.2.2005.

P.C.:

1. Heard learned Counsel appearing on behalf of the applicant and the learned A.P.P. for the State.

2. The applicant has filed this criminal application seeking stay of the conviction and sentence passed by the Additional Sessions Judge, Baramati, by

judgment and order dated 19.1.2005 in Sessions Case No. 115 of 2001. By the said judgment and order, the Additional Sessions Judge, Baramati, has convicted the application for having committed an offence punishable under section 304(II) of the Indian Penal Code and sentenced him to suffer R.I. for 3 years and to pay a fine of Rs. 3,000/- in default to suffer S.I. for 2 months.

3. Applicant was working as a Police Sub-Inspector and was posted at Yevat Police Station. On 28.4.1998, the applicant received a wireless message while he was on patrolling duty at night at about 10 p.m. in which he was informed that robbery/dacoity had taken place near village Boriandi and the applicant was asked to investigate into the matter. Accordingly, applicant along with his staff went near the village to investigate into the matter. Applicant got down from his jeep and asked his driver and other police constables to look for the thieves in another direction and he proceeded to go near village.

4. It is an admitted position that 3 villagers woke up due to the commotion and they made enquiries with the driver of the jeep as to what had happened and villagers were informed by the driver that an incident of robbery had taken place. The villagers on their own went to search for the thieves. The villagers found that one person was standing in the field and they suspected that this man was one of the thieves and therefore, they proceeded to go to his direction. Applicant on the other hand, had mistaken these villagers as thieves and, therefore, he took out his revolver and fired a bullet which hit on Tukaram as a result of which Tukaram died on the spot. The trial Court convicted the accused for offence punishable under section 304 (II) of the I. P. C. and sentenced him to suffer R.I. for 3 years. Appeal has been admitted by this Court and applicant is released on bail.

5. Learned Counsel appearing for the applicant submitted that this is a fit case where judgment and order of the trial Court be stayed and if there is no stay to

the conviction and sentence the applicant is likely to loose his job. He submitted that the incident in question had taken place under tragic circumstances and there was no intention or knowledge on the part of the applicant that the deceased would die as a result of the injuries which were caused by the bullet fired from his revolver.

6. Learned A.P.P. appearing for the State has vehemently opposed the said submissions made by the learned Counsel for the applicant. He submitted that from the evidence it can be seen that the applicant after having fired a shot and after having realised that Tukaram was one of the villagers, proceeded towards Highway and did not help other villagers in taking Tukaram to the hospital. He submitted that this conduct of the applicant shows that he had knowledge that as a result of the bullet fire Tukaram had injured. He further submitted that evidence shows that applicant ran away from the scene instead of helping the victim. This did not show bonafide of the applicant. Conduct of the application was

not bonafide.

7. In my view, considering the facts and circumstances of the case, this is a fit case where judgment and order of the trial Court should be stayed pending the hearing and final disposal of the appeal. Both the applicant and the villagers were under the mistaken belief about identity of each other. Incident in question had taken place in the early morning when it was dark and neither party had knowledge about identity of the other villagers. From the evidence on record, it appears that the applicant had acted on the spur of the moment, either in self-defence or in order to apprehend the thieves in the robbery which had taken place during the course of the night. In these circumstances, this is a fit case to grant stay of conviction and sentence. Application is, therefore, allowed in terms of prayer clause (a).